

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 830 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHATIA NAVINCHANDRA N.SWALI

Versus

CHHAGANLAL P SONI

Appearance:

MR CC KAMDAR for Petitioner

MR SURESH M SHAH for Respondent No. 1

Mr. Y.F.Mehta A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/10/96

ORAL JUDGEMENT

This petition has come up for final hearing today after the Rule was issued in this case on 4.10.94.

2. Present petition is filed by Navinchandra Narottam Swali a residing at Bhatia seeking to quash the criminal complaint No. 136/93 on the file of the JMFC,Mundra. The petitioner of the owner of a building

in which the respondent no.1 complainant is running an auditorium as a tenant of the petitioner. As the tenant had fell in arrears in paying the rent of the premises the plaintiff landlord had filed a suit in the civil court in the year 1987. Thereafter, when the said suit became ripe for final hearing, the same was placed in Lok Adalat and in Lok Adalat a consent decree was passed on 1.9.93. But as per the said consent decree respondent no.1 defendant was to pay Rs. 1 lac as price of the premises occupied by him. On the date of the consent terms, Rs. 25,000/- were paid in cash and the remaining amount was to be paid on or before 31.5.93. It seems that before that date i.e. 31.5.93, the complainant respondent no.1 had given a public notice in the local newspaper Kutch Mitra about his intended sale transaction in his favour. Knowing about the said public notice, the sons of the petitioner, objected to the said transaction by giving reply through an advocate and they also served a notice on the petitioner contending that he cannot sell the said property without consent their as it is ancestral property and that there is no necessity to sell the same. On getting the said notice, the petitioner returned the amount of Rs. 25,000/- by Demand Draft dated 12.6.93 and the respondent no.1 complainant also filed execution proceedings being darkhast dated 20.9.93 in the civil court to execute the consent decree passed on 15.4.93. In spite of this, the complainant has filed a complaint bearing no. 13/93 alleging that the present petitioner had committed an offence punishable under section 406 and 420 IPC by refusing to abide by the terms of the consent decree and by making use of the amount of Rs. 25,000/- from 15.4.93 till 12.6.93. On receipt of the said complaint, JMFC, Mundra was pleased to pass an order directing the PSI, Mundra to investigate the complaint under section 156(3) Cr.P.C. The petitioner has come before this Court to quash the said cri.case filed against him.

3. The petitioner has come before this court to quash the said criminal proceedings. It is settled law that power under section 482 Cr.P.C. could be exercised by the High Court in quashing the criminal proceedings only in case if it is found by the court that the allegations made in the complaint are patently absurd and inherently improper and that no prudent person can ever reach such a conclusion that there is sufficient ground to proceed against the accused and when it is a clear case of abuse of process of law. It is also settled law that on such issuing process, it is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object for

consideration of the merit of the case at this stage could only be to determine whether there are sufficient ground to proceed further or not. If however, a perusal of the documents, it is quite clear that the petitioner does not make out any case against the accused or the complaint does not disclose essential ingredients of offence which is alleged against the accused, then taking cognizance of the said case would be improper and unjust. In the case of Punjab National Bank vs. Surendra Prasad Sinha A.I.R. 1992 (SC) 1815 it has been held by the Apex Court that judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the person needlessly.

3. In this case it is an admitted fact that the respondent no.1 is in occupation of the building not as an owner but as a tenant and a suit was brought against him for his eviction on the ground of default in payment of rent. The complainant has also clearly admitted that in the said suit, a consent decree was passed on 15.4.93. As per the said consent term the building in question was to be sold to the respondent no.1 complainant for the consideration agreed between the parties. He has further stated in his complaint that in pursuance to the said consent terms, he had paid the amount of Rs. 25,000/- to the present petitioner. This amount of Rs. 25,000/- was not paid to the present petitioner on account of any representation made by him but on account of the clear agreement between the parties towards the sale of the property. The complainant has further mentioned that the present petitioner has returned the amount by expressing his inability to fulfil the terms of the decree by executing the sale deed in his favour. The complainant respondent no.1 has further stated in his complaint that thereafter he filed execution proceeding in Reg. Civil Suit no. 20/93 to execute the said consent decree which is pending in the civil court. Now, when all these facts are clearly admitted by the complainant in his complaint, his approach to the court for the alleged offence punishable u/s 420 and 406 IPC is not at all warranted. The averments in the complaint clearly shows that the dispute between the parties is clearly a civil dispute. Therefore, in the circumstances when the dispute between the parties is clearly a civil dispute, recourse to the criminal court is unwarranted, unjustified and would amount to a clear case of abuse of process of law.

4. From the averment made in the complaint itself it would be clear that the real dispute between the parties is civil dispute and there was no justification for taking recourse to criminal court. The learned Magistrate has carelessly passed an order directing the police to hold inquiry under section 156(3) Cr.P.C. He has passed the order without reading the complaint and without going through the averments made in the complaint. It must be remembered that the order of issue of process is a judicial order and when a judicial order is to be passed by a judicial officer, he must apply his mind to the facts before passing such an order. No doubt a Judicial Magistrate is entitled and permitted to pass an order to proceed with the investigation u/s 153(3) Cr.P.C. of a private complaint registered before him But before doing so, he has to carefully read the complaint and find as to whether he is justified in passing such an order. Merely because he has power to issue process or to direct the police u/s 153 Cr.P.C. it could not be said that the order is legal and proper. Merely because he has the authority to pass such an order and he passes such an order without application of mind it could not be upheld and accepted. It must be remembered that judicial officers are respected by the citizens not because they could inculcate injustice on technicalities but because they can remove injustice by following law and that is what is exactly expected of a judicial officer.

5. Thus I hold that present petition will have to be allowed. Proceedings of cri.case no. 13/93 on the filed of JMFC, Mundra is hereby quashed and set aside. Rule made absolute.

(S.D.Pandit.J)